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Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Gary Jones
Deputy Director

May 14, 2013

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

42 May 14, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS:
APPROVAL OF THIRD EXTENSION OF AND MODIFICATION TO LEASE OPTION
AGREEMENT TO FACILITATE REDEVELOPMENT –
PARCELS 52R AND GG (BOAT CENTRAL) – MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval of Third Extension of and Modification to Lease Option Agreement for Parcels 52R and GG, providing for an extension of up to a maximum of 6 months to allow Boat Central to negotiate a new option agreement and lease agreement with County.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Beaches & Harbors to execute the Third Extension of and Modification to Lease Option Agreement with respect to Parcels 52 and GG, Marina del Rey, granting an extension for up to 6 months to provide additional time for Boat Central to negotiate a new option agreement and lease agreement with County for redevelopment of the parcels as entitled.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On May 22, 2007, your Board granted MDR Boat Central, Ltd. ("Boat Central") an option to facilitate redevelopment of Parcels 52R and GG. The proposed project contemplates creation of additional boat storage spaces in Marina del Rey by utilizing a vertical storage method, allowing a greater number of boats to be stored in a given square

footage of land area. The proposed dry-stack boat storage building contains approximately 47,084 square feet of space, is 70 feet high, is partially cantilevered over the water (97 feet on the west side and 45 feet on the east side), and will accommodate between 346 to 367 boats, depending on size, and 28 boat trailers. The proposal is to provide additional outside storage space for 30 mast-up sailboats and no less than 131 parking spaces. The proposed project would not only accommodate the number and types of boats presently dry-stored in the Parcel 77 surface storage lot, which will be displaced when Parcel 77 is redeveloped, but would also provide significant additional capacity for boats currently in wet slips or kept outside of the Marina. In addition, the project as proposed would include a 3,070 square foot office/lobby area, a 1,600 square foot maintenance facility, a 3,265 square foot Sheriff boatwright facility with a 2,200 square foot yard area, and three dedicated public wash down spaces. All new docks would be constructed, except for the existing Sheriff/County maintenance docks, which would be required to be replaced no later than ten years from the start of the lease. A proposed lease would be for a term of 60 years for Parcels 52R and GG; require payment of a non-refundable \$100,000 option fee; and establish a sinking fund, namely a Capital Improvement Fund. Total development costs would be required to be not less than \$7.5 million (in 2005 dollars).

Although Boat Central diligently pursued the entitlements for the proposed project, it was unable to acquire such entitlements by the original end date of the option agreement of November 22, 2009. Intervening court decisions restricted County from entering into a new option agreement until compliance of the project with the California Environmental Quality Act ("CEQA"), including certification of an Environmental Impact Report (EIR) for the project. By agreement dated November 10, 2009 your Board granted an extension of up to 36 months for Boat Central to complete the CEQA process and negotiate a new option agreement and a lease agreement with County. Your Board subsequently approved additional extensions through May 20, 2013 for these purposes. County agreed that during the term of those extension periods it would not enter into negotiations with respect to the premises or the project with any other party.

The Department of Regional Planning held a hearing on April 24, 2013 to consider both the EIR and the landside Coastal Development Permit for the project and approved the project at that meeting. Boat Central has requested an additional extension of time for: i) completion of the CEQA process for the project, including consideration of the certification of the EIR, and ii) negotiation of the terms of a new option agreement and lease agreement.

In consideration for the proposed additional extension not to exceed 6 months, Boat Central has agreed to pay County a total amount not to exceed \$13,481.46. The sum of \$6,814.80 shall be payable upon signing of the extension agreement, which provides for a 92-day extension to August 20, 2013. If as of the then-current expiration date, despite Lessee's best efforts the EIR for the project has not been certified by County, or Lessee

and County have not reached agreement on a new option agreement and lease agreement, then the Director of the County's Department of Beaches and Harbors (the "Director"), in his sole discretion, shall have the right to extend the expiration date for up to three additional periods of 30 days each upon delivery by Lessee to County, not later than ten (10) days prior to the then-effective expiration date, of both written notice by Lessee to County of the exercise of such extension right and the payment by Lessee to County of an additional extension fee of \$2,222.22 for each such 30-day extension. In no event shall the total extension periods extend beyond November 21, 2013.

Additionally, Boat Central agrees to negotiate in good faith to reach an agreement on a new option agreement and lease agreement for consideration by your Board after the completion of CEQA compliance. The schedule set forth above has been reviewed by the Department of Beaches and Harbors' (Department) consultants who confirmed that the schedule is reasonable. In consideration for Boat Central's continued efforts on the proposed project and payment of the foregoing extension fees, County will agree during the above additional extensions not to enter into negotiations with respect to the premises or the project with any other party.

Implementation of Strategic Plan Goals

The recommended action will allow Boat Central to proactively redevelop its proposed improvements, which will result in fulfillment of approved Strategic Plan Goals No. 1, "Operational Effectiveness," Strategy No. 1, "Fiscal Sustainability", and Goal No. 4, "Community and Municipal Services," Strategy No. 1, "Cultural and Recreational Enrichment", respectively.

FISCAL IMPACT/FINANCING

Operating Budget Impact

Upon your Board's approval of the proposed extension agreement, the Department's Marina operating budget will receive a one-time \$6,814.80 payment as stated above. The payment was not included in the Department's 2012-13 budget; therefore, it will be accounted for as over-realized revenue.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The original option for Parcels 52R and GG commenced on May 22, 2007 for an initial term of eighteen months which was subsequently extended for two additional 6-month periods to November 22, 2009. The Extension of and Modification to Lease Option Agreement dated November 10, 2009 granted Boat Central further extensions to not later than November 22, 2012 to obtain its entitlements and to negotiate a new option agreement and lease agreement with County. The Second Extension to and Modification of Lease Option Agreement changed the outside date to complete the EIR

certification and negotiate a new option and lease agreement to no later than May 20, 2013. This Third Extension to and Modification of Lease Option Agreement changes the outside date to complete the EIR certification and negotiate a new option and lease agreement to no later than November 20, 2013.

ENVIRONMENTAL DOCUMENTATION

Approval of the Agreement does not authorize construction or re-construction of any improvements on the parcels and does not constitute a project for purposes of the California Environmental Quality Act. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment are under review by the Department of Regional Planning.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Director of the Department of Beaches and Harbors to execute the Third Extension of and Modification to Lease Option Agreement. Should you have any questions, please contact Matthew Kot at (310) 305-1439 or mkot@bh.lacounty.gov.

Respectfully submitted,

Gary Jones

for Santos H. Kreimann, Director

SHK:GJ:mk
Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

**THIRD EXTENSION OF AND MODIFICATION TO
LEASE OPTION AGREEMENT
(Parcels 52R and GG)**

THIS THIRD EXTENSION OF AND MODIFICATION TO LEASE OPTION AGREEMENT ("**Second Extension Agreement**") is dated as of May ____, 2013 between COUNTY OF LOS ANGELES ("**County**"), and MDR BOAT CENTRAL, L.P., a California limited partnership ("**Lessee**").

RECITALS

A. County and Lessee entered into that certain Lease Option Agreement dated as of May 22, 2007 (the "**Original Agreement**"), pursuant to which County granted to Lessee an option to lease (the "**Option**") certain real property in Marina del Rey commonly known as Parcels 52R and GG and more particularly described on Exhibit A attached to the Agreement (the "**Premises**").

B. The Outside Date for the exercise of the Option under the Original Agreement expired on November 22, 2009.

C. County and Lessee entered into that certain Extension of and Modification to Lease Option Agreement dated as of November 10, 2009 (the "**First Extension Agreement**") that extended the term of the Original Agreement to not later than November 22, 2012 and modified the provisions of the Original Agreement to allow Lessee additional time to obtain its entitlements and to negotiate a new option agreement with County to be entered into only after compliance with the California Environmental Quality Act (California Resources Code Sections 21000 *et seq.*) ("**CEQA**").

D. County and Lessee entered into that certain Second Extension of and Modification to Lease Option Agreement dated as of November 20, 2012 (the "**Second Extension Agreement**") that further extended the term of the Original Agreement to not later than May 20, 2013. The Original Agreement, as modified by the First Extension Agreement and the Second Extension Agreement, is hereafter referred to as the "**Existing Agreement**."

E. County and Lessee desire to enter into this Third Extension Agreement to further extend the term of the Existing Agreement for the purpose of providing additional time for the negotiation by County and Lessee of a New Option.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and County hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms used in this Third Extension Agreement and not otherwise defined herein shall have the meanings given to such terms in the Existing Agreement.

2. **Further Extension.** Section 2 of the Existing Agreement is hereby amended and restated in its entirety to read as follows:

“2. **Agreement Term.** This Agreement shall continue in effect for a term (the “**Agreement Term**”) that expires on August 20, 2013 (the “**Expiration Date**”). In consideration of the extension of the Agreement Term to the Expiration Date set forth above, concurrent with the execution of this Agreement Lessee has paid to County an Extension Fee of Six Thousand Eight Hundred Fourteen Dollars and Eighty Cents (\$6,814.80).

If as of the then-current Expiration Date, despite Lessee’s best efforts the final environmental impact report for the Project has not been certified by County, or Lessee and County have not reached agreement on a New Option, then the Director of the County’s Department of Beaches and Harbors (the “Director”), in his sole discretion, shall have the right to extend the Expiration Date for up to three additional periods of 30 days each (each, an “**Extension Right**”) upon delivery by Lessee to County, not later than ten (10) days prior to the then-effective Expiration Date, of both written notice by Lessee to County of the exercise of such Extension Right, and the payment by Lessee to County of an additional Extension Fee of Two Thousand Two Hundred Twenty-Two Dollars (\$2,222.00) for each such Extension Right.

The Extension Fees shall be non-refundable, and are in addition to the Option Fee previously paid by Lessee pursuant to Section 4 of the Original Agreement and the Extension Fees previously paid by Lessee pursuant to Section 5 of the First Extension Agreement and the Extension Fees previously paid by Lessee pursuant to Section 2 of the Second Extension Agreement.

Notwithstanding any contrary provision hereof, there shall be no extension of the Expiration Date at any time during which there is an uncured default by Lessee under this Agreement. In addition, there shall be no extension of the Expiration Date following any affirmative disapproval of the Project by County or any department, commission, board or other agency thereof, except for a disapproval that instructs or requests Lessee to modify the Project for reconsideration of such disapproval. Time is of the essence with respect to the exercise by Lessee of any right to extend the Expiration Date pursuant to this Section 2.”

3. **County Costs.** Lessee shall promptly following written demand from County reimburse County for the Actual Costs (as defined in the Lease) incurred by County in the review, negotiation, preparation and documentation of the matters that are the subject of this Third Extension Agreement.

4. **Exclusivity.** County agrees that during the Agreement Term it shall not enter into negotiations with respect to the Premises, the Project or any other development of the Premises with any other person or entity, without the prior written consent of the Lessee. Except as

otherwise agreed to, County shall only negotiate regarding the Premises, the Project or any other development of the Premises with the Lessee during the Agreement Term.

5. **Entire Agreement.** This Third Extension Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

6. **Attorneys' Fees.** In the event of any action, proceeding or arbitration arising out of or in connection with this Third Extension Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services to the extent that County is represented by the County Counsel and is the prevailing party.

7. **No Other Modifications.** All other terms and conditions of the Existing Agreement continue in full force and effect.

8. **Counterparts.** This Third Extension Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the undersigned have executed this Third Extension Agreement as of the date first written above.

LESSEE:

MDR BOAT CENTRAL L.P., a California limited partnership

By: MDR Boat Central, LLC, a California limited liability company

By: Pacific Marina Developments, Inc., a California corporation, Its Manager


By:


Thomas J. Hogan, President

COUNTY:

THE COUNTY OF LOS ANGELES

By:


Director, Department of Beaches and Harbors

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By:


Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:

